

Custody of child after parents' separation

The cases of divorce and children's custody shall be decided by the Qāzī in Islāmic Shari'ah Court. Even in Hyderabad, we have such a court: at the house of Maulānā 'Āqil Husāmī's son near Charminar. When the Qāzī gives the verdict, he will also enumerate the rights and duties of both the sides.

Though an Indian Qāzī lacks the executive authority, no one stops an Allāh-fearing couple from obeying the commands of Allāh and his holy Prophet ﷺ which in the given scenario will be the verdict of the Qāzī.

In brief, the parent who doesn't get the custody – usually father – will have a right to frequently meet his child, and the custodian will not be permitted to prevent this.

Answer completed. Whatever follows is only meant to give you a general idea and does in no way purport to be a substitute for Qāzī's verdict.

| | 0-7 years | 7-adulthood | Adulthood-marriage |
|------|----------------------------|-------------|--------------------|
| Boy | Mother | Father | Boy's choice |
| Girl | 0-Age of sexual attraction | | Later on |
| | Mother | | Father |

Though 7 years has been put as the differentiator in columns 1 and 2, actually it is that age of the child when he is able to eat, drink, dress, and wash in the washroom, all by himself. The jurists have estimated this age as 7. But if the parents differ regarding the child's age, the Qāzī will decide based on whether the child is able to do the above things by himself.

The age of sexual attraction for a girl is 6-9 years, not less than 6 and not more than 9. The Qāzī or a learned cleric may decide that for specific cases.

After the boy becomes adult, he may choose to stay separately or with one of his parents. But if he is abnormally foolish in financial matters, like he does not understand the importance of money and spends it meaninglessly, then he shall not have the choice. The father will keep him with himself. In both the cases, the expenses of the adult son is not the father's responsibility. If he does bear the expenses, it will be a desirable act.

In all the other cases, the child will have no choice regarding his custody.

Attaining the age of 18 years is in no way related to adulthood in Islāmic rulings.

According to [Simple Fiqh](#), the details are:

A boy is considered adult when nocturnal ejaculation occurs to him, or he engages in sexual intercourse and ejaculates during it, or he makes a woman pregnant. If none of these occur to him then he becomes adult on completing 15 years. The minimum age for him to become adult is 12 years.

A girl is considered adult when menstruation, nocturnal ejaculation or pregnancy occurs to her. If none of these occur, then she becomes an adult on completing 15 years. The minimum age for her to become an adult is 9 years. (From Al Hidāyah 3/281) [[Simple Fiqh, Purification, Footnote 25](#)]

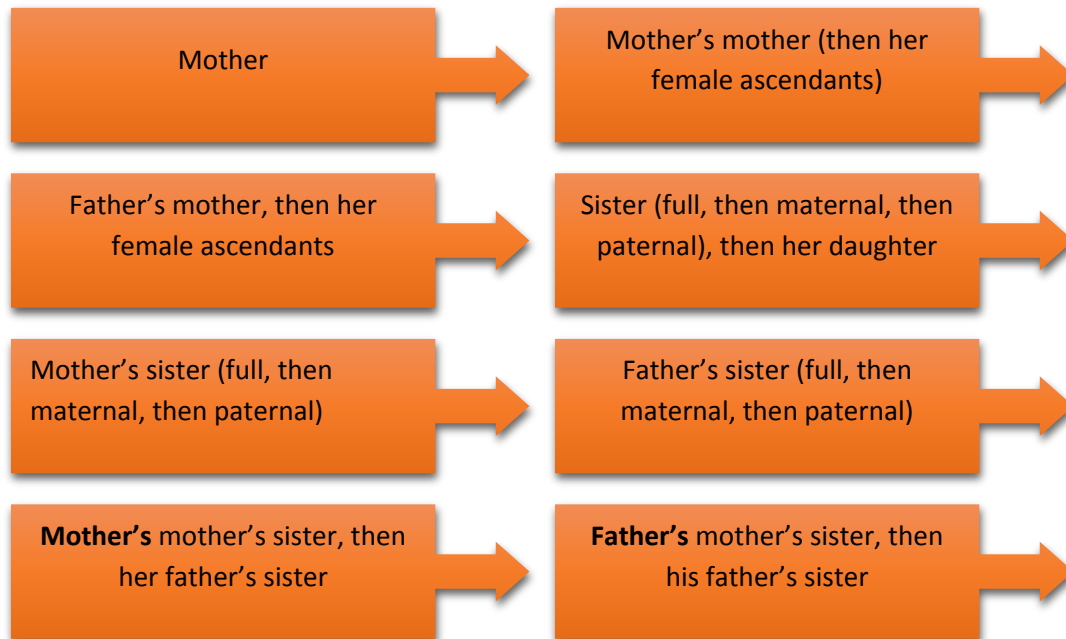
If the mother is unwilling to take custody, or is married to a man who is not a blood-relation to the child, or is a habitual sinner; or keeps going out leaving the child uncared for; the right of custody passes on to the next in the Order of Female Custodians, then to those in the Order of Male Custodians. But if she later on separates from the stranger husband, and lives unmarried or marries a blood-relation of the child (like child's father's brother), then she gets back her right of custody.

These conditions apply to all the females in the Order of Custody.

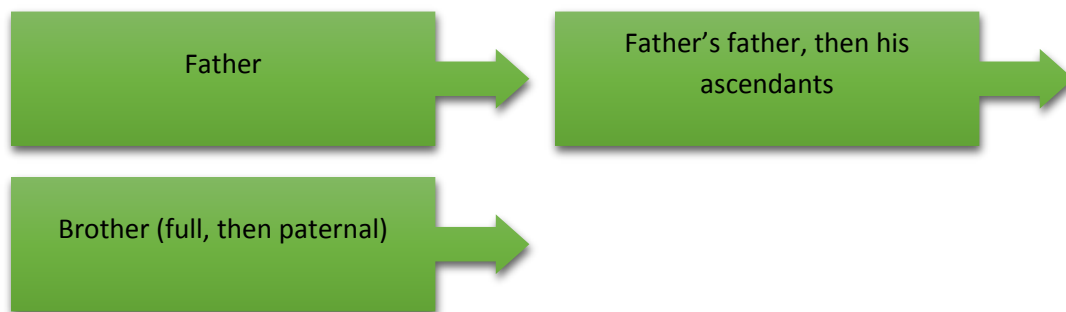
Irrespective of who gets the custody, the father has to bear the expenses of the child. If he is not alive, then the child's inheriting blood-relations shall bear the expenses in proportion of their shares in inheritance. You will find the list of such relations and their shares in the java application [Inheritance-130829.jar](#). Double click Inheritance.jar file, and it should run. If it does not, execute [jarfix.exe](#).

After the boy completes 7 years, the father must take the boy in his custody. The father's willingness or unwillingness does not matter.

Order of Female Custodians

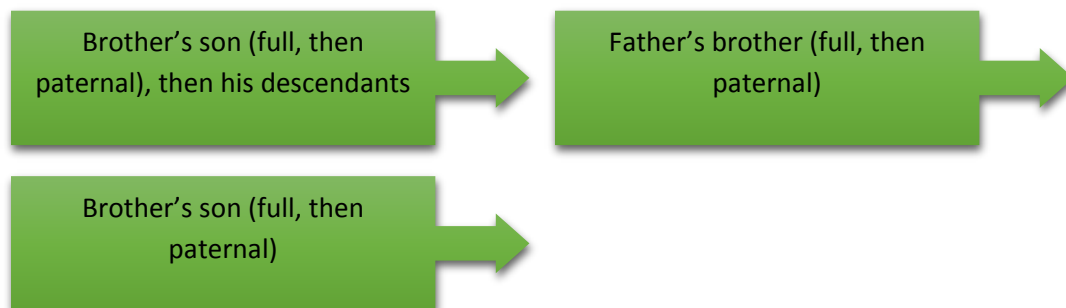


Order of Male Custodians



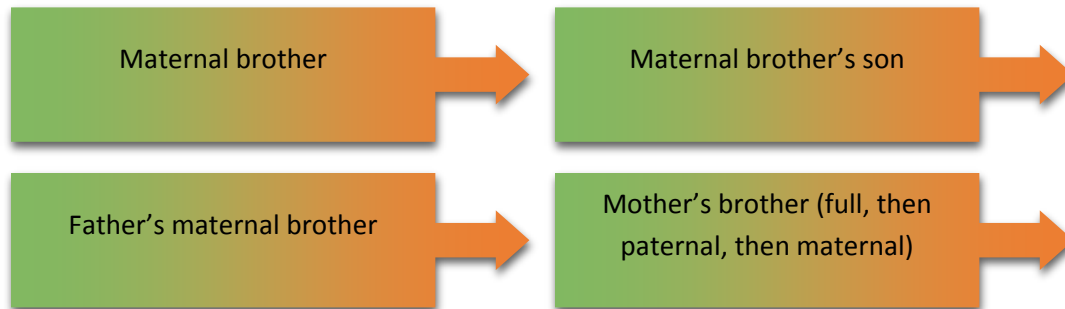
Order of Male Custodians for boy

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Order of Male Custodians for girl

[Continued from above]



If more than one person has the right to custody by virtue of their equal status in the Order of Custodians – like several of mother’s sisters, father’s brothers, etc. – then the one whose guardianship will be most beneficial to the child shall be preferred, followed by the one whose age is more.

If the mother gets custody of the child, she shall not take the child to a distant city or village except if it is her original place and the father had contracted marriage with her at that place. If a person other than the mother gets custody, then she or he will have no right to take the child to a *distant* city or village.

Near and **distant**: The city or village will be considered *near* if it is possible for the father to visit his child, then come back to his place by night.

If the parents had been staying in a city, the mother is **not** allowed to shift her residence to a *nearby* village. However, shifting from a village to a *nearby* city is allowed. Shifting from a village to another *nearby* village, or from a city to another *nearby* city is also allowed.

Sources: Al Hidāyah 2/283-2/285, Fathul Qadīr 4/367-377, [daruliftaa.com/node/5800](http://www.daruliftaa.com/node/5800)

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<QUESTION>

I live in England and my ex-wife is from Toronto, Canada. Unfortunately, we recently underwent a divorce. She left England with our child to her home country without my permission. I am not able to provide my child with any support, care and security. I am unable to take care of his proper upbringing, schooling, and other guardianship duties. I tried moving there for the sake of my child but I can not move to that country myself because I am not allowed to work there.

If she moves here, I can provide her with living. But while she is there, and my son is raised there, he will be deprived of fatherly care and guardianship.

I want to know whether Islamically she is allowed to remain there without my permission. Can she let the child forgo his fatherhood care, security and support just because his mother wants to live and raise him in her home country?

<ANSWER>

In the name of Allah, Most Compassionate, Most Merciful,

As explained in previous answers, the mother has a right of custody over a male child until he is capable of taking care of his own basic bodily functions and needs such as eating, dressing, and cleansing himself. This has been determined at seven (Islamic) years of age, since children are normally able to take care of themselves at this age.

From the age of seven Islamic years till he attains puberty, the father has a right of custody over him. After puberty, the boy, if he is mature and wise, can choose to live with whosoever he wishes, or live on his own.

In the case of a female child, the mother has a right of custody over her until she reaches the age of puberty (i.e. she starts menstruating). This has been approximated at nine (Islamic) years of age. Thereafter, the father has a right of custody over her until she marries. (Ibn Abidin, *Radd al-Muhtar ala 'l-Durr al-Mukhtar* 3/566, Qadri Basha, *Hanafi articles* 498 & 499 & al-Mawsili, *al-Ikhtiyar li ta'lil al-Mukhtar* 3/237)

It was also explained previously that irrespective of who from the mother and father has custody-rights, the other party is entitled to the right of visitation according to mutual understanding and agreement. It is unlawful and a grave sin to deprive the other party of their visitation right.

In view of this very reason, and also in view of the fact that the father is responsible for the proper upbringing (tarbiya) and financial maintenance of the child, the jurists (fuqaha) have outlined rules in regards to whether the mother (during her period of custody) is allowed to move with the child to another region or not.

After a lengthy and somewhat tiresome discussion on the subject by Hanafi Imams: Tumurtashi, Haskafi and Ibn Abidin (may Allah have mercy on them all) in *Radd al-Muhtar ala 'l-Durr al-Mukhtar Sharh Tanwir al-Absar*, Imam Ibn Abidin himself summarized the juristic ruling with the following:

"In clear and concise terms it could be said: A divorced woman is permitted to move (khuruj) with the child from a village to a nearby town/city, but not vice versa (i.e. from a town/city to a nearby village). And [she is permitted to move with the child] from one city to another city provided it is her hometown and he (the father of the child) had contracted marriage with her there..." (Radd al-Muhtar 3/570)

A few lines prior to the above text, he states:

"Two conditions are indispensable for the permissibility of [the mother of the child] moving to a distant city: It being her hometown, and the marriage being contracted there." (Ibid)

Likewise, Shaykh Muhammad Qudri Basha explains in his standard codification of Hanafi personal law, *al-Akham al-Shariyya fi 'l-Ahwal al-Shakhsiyya* that the mother is not allowed to move with the child without the father's permission to

a distant town/city, unless it is her hometown and he married her there, in which case she is permitted to move there without his consent, even if the town/city is distant from the father's place of residence.

He further states that if where she intends to move is her hometown but the marriage was not contracted there, or the marriage was contracted there but it is not her hometown, then in both cases, she is not permitted to move there with the child without the child's father's permission, unless the place is nearby to the residence of the father in a manner that he is able to visit his child and return home before night. (See: al-Akham al-Shar'iyya fi 'l-Ahwal al-Shakhsiyya, Item no 393)

So, in view of these texts of the Hanafi School, we may conclude by saying that if the (divorced) mother, during her period of custody, wants to move with the child to a nearby city or town where the child's father is able to come, visit the child, and return home before night-time, she can do so without the father's permission in all situations. If, however, she desires to move to a distant city or town where the child's father is not able to come, visit the child, and return home before night-time, then she can only do so provided it is her hometown and provided her marriage with the child's father was contracted there.

As such, if Toronto is your ex-wife's hometown and your marriage to her was contracted there, then she is free to move there with your child without your consent. However, such issues are best resolved through mutual understanding, regard for one another, tact, love, and keeping the child's interests in mind. If she does decide to move there with your child, both of you should try and come to some sort of mutual arrangement where the child is sent to live with you for some time during the year, for example.

And Allah knows best

[Mufti] Muhammad ibn Adam

Darul Iftaa

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